

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

NINA SHAHIN,)	
)	C.A. No. K10A-06-002 JTV
Appellant,)	
)	
v.)	
CITY OF DOVER, BOARD OF)	
ASSESSMENT,)	
)	
Appellee.)	

Submitted: November 8, 2010
Decided: February 28, 2011

Nina Shahin, *Pro Se.*

Erika Schrader, Esq., The Lawson Firm, Rehoboth Beach, Delaware. Attorney for Appellee.

Upon Consideration of the Appellant's
Appeal From Decision of Board of Assessment
AFFIRMED

VAUGHN, President Judge

Shahin v. City of Dover
C.A. No. K10A-06-002 JTV
February 28, 2011

ORDER

Upon consideration of both parties' briefs and the record of the case, it appears that:

1. Appellant Nina Shahin appeals the City of Dover Board of Assessment's decision concerning the assessment of a residential property owned by both her and her husband, Mazen Shahin. Based on the parties' submission and the record of the case, the Court affirms the Board's decision.

2. On April 20, 2010, Nina and Mazen Shahin filed an annual appeal to the Board contending that their property was over assessed. On May 3, 2010, the Board denied the appellant's appeal. The appellant filed an appeal with this Court pursuant to 9 *Del. C.* § 8312 and Superior Court Civil Rule 72.

3. The property at issue is a single family home located on Shinnecock Road in the Fox Hall West subdivision. The City increased the 2010 assessed value of the property over, the 2009 assessment, to \$286,700; \$90,600 for the land and \$198,100 for the improvement. As a result, the appellant's property tax went from \$839.85 in 2009 to \$968.47 in 2010. Appellant asked for a reduction in the assessment of the property to \$150,000. She bases this request on sale listings for properties near her home, and the fact that those properties have failed to sell on the open market.

4. At the Board's hearing, the appellant presented copies of property information sheets regarding neighboring property owners' attempts to sell their homes within the subdivision. The appellant argued that because most of the homes

Shahin v. City of Dover

C.A. No. K10A-06-002 JTV

February 28, 2011

in the subdivision listed for sale remained unsold, a reduction in her property's assessed value was justified. The appellant also noted that a neighboring property, almost identical to her home, was assessed at \$35,200 less than her property.

5. During the course of the hearing, and the subsequent deliberations, the Board discussed several reasons why the appellant's property assessment should not be lowered. Additionally, the Board found the City's data on valuation more persuasive. The valuation done by the City was based, in part, on a market comparison. The assessor used a neighboring property that had recently sold for \$375,000 in 2007, as a comparable. The Board then compared the neighboring property cited by the appellant. The Board found the appellant's property to be 250 square feet larger than the property used by the appellant as a comparable. After dismissing the appellant's proposed comparable property, the Board analyzed the nature of the homes in the subdivision and the degree of differences between the homes' styles, sizes, and ages. Lastly, the Board dismissed the appellant's method of setting fair market value, stating that an individual trying to sell their house, then deciding not to sell, is not a proper way of establishing value. The appellee made a motion to the Board to retain the current assessment value. The Board voted unanimously in favor of the motion and the appeal was denied.

6. Before reaching the merits of the appeal, the Court will address two concerns raised in the appellant's opening brief. The appellant contends that her due process rights were violated because she was deprived of an impartial tribunal and denied access to necessary discovery. Both claims are without merit. The appellant's

Shahin v. City of Dover

C.A. No. K10A-06-002 JTV

February 28, 2011

first contention is based on the alleged partiality of a Judicial Officer. That issue is moot as the Judicial Officer complained of is not involved in this litigation. Next, the appellant argues that she was denied access to the record of her Board of Assessment hearing. On October 20, 2010, the Court provided instructions as to how the appellant could access those materials. Therefore, this contention has been resolved and the claim is moot.

7. The appellant raises several issues on appeal. First, the appellant contends that the Board's decision was arbitrary, capricious, contrary to law, and not supported by substantial evidence. Additionally, she believes that the increase was unjustified in that the tax will be used to increase the salaries of top city administrators. Next, the appellant contends that there is evidence that foreign-born homeowners were assigned the highest values – an indication of discrimination on the basis of national origin.¹

8. The appellee contends that the appellant's allegations, namely the arbitrary assignment of values to "foreign-born" owners and the unjustified assessments to increase City administrator's salaries, are unsupported by evidence

¹ The appellant undergoes lengthy analytical comparisons between her property and her neighbors property. The appellant's comparisons focus on the size, the age and the economic situation of five other houses: (1) Lot #55 was on the market since 2007 for \$299,900, never sold and rented; (2) Lot #101 was on the market since 2008, was not sold and is now rented; (3) Lot #107 tried to sell house, could not and withdrew the house from the market; this house is allegedly assessed for \$35,000 less; (4) Lot #127 on market but never sold; and (5) Lot #147 was on the market at the time of the hearing, never sold and has been withdrawn from the market." Pet'r's Br. 6-7.

Shahin v. City of Dover

C.A. No. K10A-06-002 JTV

February 28, 2011

and waived because they were not presented at the hearing below. Furthermore, the appellee contends that the evidence presented by the appellant is not relative to valuation but is rather anecdotal; and even if taken in the light most favorable to the appellant, it is not pertinent, pursuant to 9 *Del. C.* § 8312©,² to the appeal at hand because it was not presented to the Board below. Additionally, when reviewing the decision to uphold the City's valuation of the property, the appellee argues that the Board made an informed decision based on both its expertise and credible evidence presented by the City.

9. A taxpayer aggrieved by the assessment of his or her property has the right to bring an appeal before the Board of Assessment and then to appeal the Board's decision to the Superior Court.³ The taxpayer faces a "substantial evidential burden at both the administrative and appellate levels."⁴ A taxpayer's appeal of the assessment of record against his property requires that:

a prima facie case of accuracy is made by the assessment record. The burden of presenting evidence to meet the prima facie case and to rebut the presumption rests upon the property owner. To fulfill the purpose, the owner's evidence must not only be competent; it must be sufficient to show a substantial overvaluation. If rebutted by such evidence, the presumption in favor of the accuracy of the

² "The appellant or each board of assessment...to present new or different evidence pertinent to the matter." 9 *Del. C.* § 8312©.

³ 9 *Del. C.* § 8311(a)-©.

⁴ *Seaford Assocs., L.P. v. Bd. of Assessment Review*, 539 A.2d 1045, 1047 (Del. 1988).

Shahin v. City of Dover

C.A. No. K10A-06-002 JTV

February 28, 2011

assessment ceases to exist.⁵

10. On appeal to this Court, “[t]he decision of each board of assessment or department of finance shall be prima facie correct and the burden of proof shall be on the appellant to show that such body acted contrary to law, fraudulently, arbitrarily or capriciously.”⁶ This Court is not to reverse if it finds that the Board relied in part on incompetent evidence but only if “the Board’s findings are clearly wrong and its conclusions not the product of an orderly and logical deductive process.”⁷ The issue before this Court is whether the Board acted contrary to law, fraudulently, arbitrarily, or capriciously in determining that the appellant did not meet her burden of presenting competent evidence sufficient to show substantial overvaluation of her property.

11. The Delaware Constitution mandates that there be uniformity in tax assessments.⁸ There is no requirement, however, that “all taxes be assessed with computer precision against all taxpayers equally...[but rather, merely] requires that

⁵ *Tatten Partners v. New Castle Bd. of Assessment Review*, 642 A.2d 1251, 1256 (Del. Super. 1993) (citing *Fitzsimmons v. McCorkle*, 214 A.2d 334, 337 (Del. 1965)); see also *Delaware Racing Assoc. v. McMahon*, 340 A.2d 837 (Del. 1975); *Seaford Assoc.*, 539 A.2d at 1047. If the Board should find that the assessment is greater than it should be it shall order a reduction. 9 Del. C. § 1305(2).

⁶ 9 Del. C., § 8312 ©; *Bd. of Assessment Review v. Steward*, 378 A.2d 113, 116 (1977).

⁷ *Levitt v. Bouvier*, 287 A.2d 671 (Del. 1972).

⁸ Del. Const. art. VIII, § 1.

Shahin v. City of Dover

C.A. No. K10A-06-002 JTV

February 28, 2011

all taxpayers of the same class residing within the tax district be treated equally.”⁹ Delaware law permits a property owner to give her opinion as to the value of her real estate. The weight to be given to the owner’s testimony, or any other evidence presented to the Board, is within the discretion of the trier of fact.¹⁰ “In valuing real estate, there is a strong preference in Delaware for the use of present market value.”¹¹

The Delaware Supreme Court in *Teachers Insurance* held:

If a taxpayer presents evidence of substantial overvaluation, based upon a valuation technique generally acceptable in the financial community, the Board should hear the entire appeal. The [City] is free to use different valuation methodologies and to present evidence and argument in support of its position that the taxpayer’s valuation is unreliable or otherwise inaccurate. The Board will be able to use its expertise to evaluate the competing methodologies; make an informed judgment as to which is more persuasive; and state the reasons for its decision.¹²

12. The appellant failed to present competent evidence that there was a

⁹ *Cronin v. Bd. of Assessment Review for New Castle County*, 1992 WL 52181, at *1 (Del. Super. 1992).

¹⁰ *State ex rel. State Highway Dept. v. J.H. Wilkerson & Son*, 280 A.2d 700 (1971); *5.97752 Acres of Land v. State of Delaware ex rel. Smith*, 202 A.2d 924 (1964); *State ex rel. Smith v. 0.15 Acres of Land*, 169 A.2d 256 (1961).

¹¹ *Cronin*, 1992 WL at *1 (citing *Board of Assessment Review v. Steward*, 378 A.2d 113 (Del. 1977)).

¹² *New Castle County Dep’t of Fin. v. Teachers Ins. and Annuity Assoc.*, 669 A.2d 100, 104 (Del. 1995).

Shahin v. City of Dover

C.A. No. K10A-06-002 JTV

February 28, 2011

substantial overvaluation, and therefore, the Board's decision is affirmed. The Board relied heavily on evidence presented by the City; including: (1) a recent sale of a neighboring property, (2) the history of the street, (3) the degree of differences between the styles, sizes, and ages of all the neighboring homes, and (4) the different developers who built the homes.¹³ In opposition, the appellant presented evidence of homes that were placed on the market and then subsequently removed by the owner; as well as, a comparable home that had a lower assessed value. That comparable home, however, was significantly smaller than the home she owns. The Board noted during deliberations that the petitioner's home had "250 square feet ... [that is] ten percent more house."¹⁴

13. The record indicates that the Board afforded little weight to the appellant's testimony and evidence. Once the evidence was presented, the Board used its expertise to evaluate the evidence and concluded that the appellant's request was without merit. After reviewing the record of the case it is clear that the Board's findings were the product of an orderly and logical deductive process.

14. Additionally, the appellant's remaining claims of discrimination against foreign-born home owners and the unjustified increase in top city official's salaries are merely conclusory allegations not based in fact or reason. The appellant has introduced no evidence to support these claims, and therefore, both must be

¹³ Hr'g Tr. 10-15.

¹⁴ *Id.* at 11.

Shahin v. City of Dover

C.A. No. K10A-06-002 JTV

February 28, 2011

dismissed.

15. For the foregoing reasons I ***affirm*** the Board of Assessment's decision.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

PRESIDENT JUDGE

oc: Prothonotary
cc: Order Distribtuion
File